378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion. Procedure in case of difference of opinion.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session. Procedure in cases submitted to High Court for confirmation.

380. Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken. Procedure in cases submitted by Magistrate not empowered to act under section 562.

380. Where proceedings are submitted to a Magistrate of the first class [1]* * * as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken. Procedure in cases submitted by Magistrate not empowered to act under section 562.

CHAPTER XXVIII.

Of Execution.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary. Execution of order passed under section 376.

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit commute the sentence to [2][imprisonment] for life. Postponement of capital sentence on pregnant woman.

383. Where the accused is sentenced to [3][imprisonment for life] or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall, forthwith forward a warrant to the jail in which he is, or is to be confined, and unless the accused is already confined in such jail, shall forward him to such jail with the warrant. Execution of sentences of transportation or imprisonment in other cases.

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[1] The words "or a Sub-divisional Magistrate" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

[2] Substituted by Act 26 of 1955, s. 71, for "transportation".

[3] Substituted, *ibid.*, s. 72, for "transportation".

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be confined.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

[1][**386.** (*1*) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(*a*) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(*b*) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(*2*) The [2][[3]State] Government] may make rules regulating the manner in which warrants under sub-section (*1*), clause (*a*), are to be executed and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(*3*) Where the Courts issue a warrant to the Collector under sub-section (*1*), clause (*b*) such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly: V of 1908

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.]

Effect of such warrant.

387. [4][A warrant issued under section 386, sub-section (*1*), clause (*a*), by any Court] may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the [5][attachment] and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate, within the local limits of whose jurisdiction such property is found.

Warrant for levy of fine issued by a Court in Jammu and Kashmir.

[6][**387A.** Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in the State of Jammu and Kashmir and the Court passing the sentence issues a warrant to the Collector of a District in the territories to which this Code extends authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter, such

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[1] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 102, for the original s. 386.

[2] Substituted by the A. O. 1937 for "L. G.".

[3] Substituted by the A. O. 1950 for "Provincial".

[4] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 103, for "such warrant".

[5] Substituted by s. 103, *ibid*, for "distress".

[6] Inserted by Act 26 of 1955, s. 73.

warrant shall be deemed to be a warrant issued under clause (*b*) of sub-section (*1*) of section 386 by a Court in the territories to which this Code extends and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.]

[1][388. (*1*) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may— Suspension of execution of sentence of imprisonment.

(*a*) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals as the case may be, of not more than thirty days, and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(*2*) The provisions of sub-section (*1*) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.]

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office. Who may issue warrant.

390. When the accused is sentenced to whipping only, the sentence shall [2][subject to the provisions of section 391] be executed at such place and time as the Court may direct. Execution of sentence of whipping only.

391. (*1*) When the accused— Execution of sentence of whipping, in addition to imprisonment.

[3][(*a*) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(*b*) is sentenced to whipping in addition to imprisonment,]

the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

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[1] Substituted by the Code of Criminal Procedure (Second Amendment) Act, 1923 (37 of 1923), s. 3, for the original s. 388.

[2] Inserted by the Criminal Law Amendment Act, 1923 (12 of 1923), s. 21.

[3] Substituted by s. 22, *ibid*, for "is sentenced to whipping in addition to imprisonment in a case which is subject to appeal".

(*2*) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(*3*) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

Mode of inflicting punishment.

392. (*1*) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the [1][2][State] Government] directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as [1][2][State] Government] directs.

Limit of number of stripes.

(*2*) In no case shall such punishment exceed thirty stripes [3][and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes].

Not to be executed by instalments. Exemptions.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping namely:—

(*a*) females;

(*b*) males sentenced to death or [4][imprisonment for life] [5]* or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

Whipping not to be inflicted if offender not in fit state of health.

394. (*1*) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution.

(*2*) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure if punishment cannot be inflicted under section 394.

395. (*1*) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months [6][or to a fine not exceeding five hundred rupees], which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(*2*) Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term [6][or a fine of an amount] exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

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[1] Substituted by the A. O. 1937 for "L. G.".
Substituted by the A. O. 1950 for "Provincial".
[3] Inserted by the Whipping Act, 1909 (V of 1909), s. 7.
[4] Substituted by Act 26 of 1955, s. 74, for "transportation".
[5] The words "or to penal servitude" were omitted by Act 17 of 1949, s. 3 (*6*).
[6] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 105.

Execution of sentences on escaped convicts.

396. (*1*) When sentence is passed under this Code on an escaped convict, such sentence, if of death, [1][imprisonment for life], fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment [2]* * [3]* shall take effect according to the following rules, that is to say :—

(*2*) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(*3*) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment [4]* * [5]* for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

[6]* * *

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

[7][**397.** (*1*) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(*2*) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.]

Saving as to sections 396 and 397.

398. (*1*) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(*2*) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment [8]* * * * * [9]* * * * * * * * * and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences of imprisonment [10]* * * * [11]* * * * effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

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[1] Inserted by Act 26 of 1955, s. 75 (*a*) (*i*).
[2] The words "penal servitude" were omitted by Act 17 of 1949, s. 3 (*7*).
[3] The words "or transportation" were omitted by Act 26 of 1955, s. 75 (*a*) (*ii*).
[4] The words "penal servitude" were omitted by Act 17 of 1949, s. 3 (*7*).
[5] The words "or transportation, as the case may be" were omitted by Act 26 of 1955, s. 75 (*b*).
[6] Clause (*a*) was omitted, *ibid.*, s. 75 (*c*).
[7] Substituted, *ibid.*, s. 76, for the original section.
[8] The words "or to a sentence of transportation" were omitted, *ibid.*, s. 77 (*a*).
[9] The words "or penal servitude for an offence punishable with imprisonment" were omitted by Act 17 of 1949, s. 3 (*9*).
[10] Substituted by s. 3 (*9*), *ibid.*, for "transportation or penal servitude".
[11] The words "or tranportation" were omitted by Act 26 of 1955, s. 77 (*b*).

Confinement of youthful offenders in reformatories.

399.† (*1*) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the [1][2][State] Government] as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the [1][2][State] Government] prescribes with regard to the discipline and training of persons confined therein.

(*2*) All persons confined under this section shall be subject to the rules so prescribed.

(*3*) This section shall not apply to any place in which the Reformatory Schools Act, 1897, is for the time being in force.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed. 1897.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

[3]401. (*1*) When any person has been sentenced to punishment for an offence, [4]* * * * * * the [5][appropriate Government] may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(*2*) Whenever an application is made to [4]* * * * * * the [5][appropriate Government] for the suspension or remission of a sentence, [4]* * * * * * the [5][appropriate Government] [6]* * * * * * may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion [7][and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists].

(*3*) If any condition on which a sentence has been suspended or remitted is, in the opinion of [4]* * * [8]of the [5][appropriate Government], [6]* * * not fulfilled, [4]* * * the [5][appropriate Government] may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer, without warrant and remanded to undergo the unexpired portion of the sentence.

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† The provisions of section 399 shall cease to apply to any area in which Parts II to XI of the Bombay Children Act, 1948 (Bom. LXXI of 1948), have been brought into operation (*vide* s. 6 of Bom. 71 of 1948).

[1] Substituted by the A. O. 1937 for "L. G.".

[2] Substituted by the A. O. 1950 for "Provincial".

[3] As regards conditional release of good conduct prisoners in the Punjab, *see* the Good Conduct Prisoners' Probational Release Act, 1926 (Pun. Act 10 of 1926).

[4] The words "the G. G. in C. or" rep. by the A. O. 1937.

[5] Substituted by the A. O. 1950 for "Provincial Government".

[6] The words "as the case may be" rep. by the A. O. 1937.

[7] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 107.

[8] The second "of" is superfluous.